atre regulations, the theatre is liable, but if he discovers the violation of a city ordinance, and makes an arrest without either the implied or express authority of the theatre, and although he was, prior to such arrest, the agent of the theatre, yet his act was an official one, and he is solely liable. *Jardine v. Cornell*, 50 N. J. Law 485.

In this connection there is an interesting case to be noted. The Massachusetts Code provided that persons requesting the appointment of a special officer should give a bond to the city treasurer, "to be liable to parties aggrieved by *official* misconduct of such police officer to the same extent as for the torts of servants and agents in their employ." It further provided that recovery could be had upon the bond as upon the bond of a constable. But the court held that this provision did not make the officer the servant of the person at whose request he was appointed. *Healy v. Lathrop, supra.* Where an officer is an agent, and exceeds his authority in a particular case, the principal may yet be liable. *Eichengreen v. Sourville*, 35 Fed. Rep. 116. The question as to whether the officer acted within the scope of his employment is for the jury. *Duggan v. Railroad Co.*, 159 Pa. St. 248; *Tyson v. Bauland, supra.* The underlying principle of all those cases wherein it was held that the special officer was a servant, and, therefore, the employer was liable, was well stated by the court in *Mallach v. Ridley*, 24 Abb. N. Cas. (N. Y. Sup. Ct.) 172, as follows: "The employers can not confer authority upon the employee and claim the benefits of his action when he acts advisedly, and absolve themselves from all risk when he acts on insufficient evidence."

FORGERY AT COMMON LAW AND ITS EXTENSION UNDER STATUTES.

The case of *People v. Abeel*, 34 N. Y. Law Journal 189 (N. Y. Ct. of App.), decided recently, announces a doctrine of forgery little short of revolutionary in its departure from the rules of common law governing this crime. The decision is an extremely important one in the development of the criminal law and merits the careful attention of the American bar.

The case under consideration involved the construction of sec. 514, subdivision 3, of the New York Penal Code, the provisions of which, so far as pertinent to the case, are as follows: "A person who . . . shall alter (utter) . . . any letter . . . purporting to have been written . . . by another person . . . which said letter . . . the person uttering the same shall know to be false . . ., and by the uttering of which the sentiments, opinions, conduct, character, prospects, interests or rights of such other person shall be misrepresented or otherwise injuriously affected . . . is guilty of forgery in the third degree." The court held that the uttering of a false writing, with knowledge of its falsity, by which writing the sentiments, opinions, conduct or rights of another person are misrepresented, constitutes the crime of forgery under the statute. The mere misrepresentation is made the gist of the offense, and proof of injury to the one whose

name is forged, or intent to defraud on the part of the defendant, is held not necessary to convict.

No extension of forgery to take in so many acts criminal in their tendency is to be found in all the centuries of legislation on the subject, as is made in this case. Writing, some years ago, a leading authority said: "From the earliest times to the present a legislative mania seems to have prevailed on this subject of forgery. The reader has seen that the common law is broad enough to cover all sorts of forgeries, which in their nature can be harmful either to individuals or the community, yet this has not satisfied the law makers, who, nevertheless, have piled statutes on statutes upon the top of the common law to overwhelm it." *Bishop, New Criminal Law*, sec. 548. It would be interesting to read what that eminent author would have written had he had this decision before him, placing forgery yet further away from the formulas of the text-books.

Forgery at the common law is the false making or material altering, with intent to defraud, of any writing which, if genuine, might apparently be of legal efficacy or the foundation of a legal liability. *Bishop, New Criminal Law*, sec. 423. There were, therefore, three elements essential to the crime: *a.* The making must be false. *Reg. v. White*, 1 Den. C. C. 208; *Barnum v. State*, 15 Ohio, 717. *b.* It must be with intent to defraud. *Rex v. Powell*, 2 W. Bl. 787; *U. S v. Moses*, 4 Wash. U. S. 726. *c.* The instrument must be of legal efficacy to impose a liability. *State v. Briggs*, 34 Vt. 501. The early English statutes relating to forgery had, for the most part, to do with the making of particular forms of it felony. Legislation in the American states has been largely along the same line. At common law forgery was a misdemeanor. In no instance has either statute or judicial decision removed from the requisites of forgery the first essential, *i. e.*, that the making of the instrument must be false. In some states statutes have been passed rendering it unnecessary to allege or prove an intent to defraud on indictment for particular species of forgery, thereby eliminating the second essential of the common law crime. A statute of Pennsylvania declaring it forgery to utter a false diploma is an illustration of such legislation. *McClure v. Com.* 86 Pa. 353.

The decision in *People v. Abeel, supra*, however, entirely sweeps away the second and third essentials of the common law crime and establishes an entirely different set of component parts, which are: *a.* The uttering of a false writing; *b* With knowledge of its falsity, and *c.* The misrepresentation by the false writing of the sentiments, conduct or rights of another person. It will be observed that the first essential remains the same as at common law. There is a marked difference between the issuing of an instrument, "with knowledge of its falsity," and issuing the same "with intent to defraud." Equally apparent is the great change in the third essential, by which the scope of that essential is enlarged to take in instruments beyond those affecting mere property rights and to include such subjects as sentiments, opinions or conduct.

The breaking down of this third essential of the common law crime, *i. e.* that the forged instrument must be of apparent efficacy to impose a liability, is the most striking differentiation of the new forgery from the old. In fact, under the New York decision, there are but two essential facts to be proved. They are (1) The uttering of the false writing. (2) The knowledge of its falsity. The third element, misrepresentation, is inferred from the false writing itself.

It is interesting to note that, while no statute has been given the extreme scope of this case, yet there is a line of decisions both in England and in this country which has gone almost as far and has positively disregarded the rule that an instrument to be the subject of forgery must be of apparent legal efficacy. These cases relate chiefly to letters of recommendation or testimonials of good character, holding such instruments susceptible of forgery. In *Reg. v. Sharman*, Dears. C. C. 285, the issuing of a false letter to enable a person to obtain a situation as schoolmaster was held to be forgery. To the same effect is *Reg. v. Toshack*, 4 Cox C. C. where, for the purpose of obtaining a berth as a seaman, a false testimonial of character was issued. In *Reg. v. Moah*, 7 Cox C. C., the defendant, with a view to obtaining a situation as police constable, issued a false letter of recommendation and his conviction on the charge of forgery was sustained. The two leading American cases which follow the English cases cited are *State v. Ames*, 2 Greenleaf (Me.) 265, and *Com. v. Coe*, 115 Mass. 481. This line of cases has, however, been much questioned and a leading text-writer on criminal law says they are at least extreme. *Clark, Criminal Law*, 338 N.

In view of the unprecedented breadth of the statutory crime as construed by the New York court and the incongruous situations that may arise from its strict application, as pointed out by Cullen, Ch. J., in his strong dissenting opinion, it seems extremely improbable that either the wisdom of the legislatures or the learning of the courts will be invoked again in the near future to further develop this peculiar aspect of the crime of forgery.

PRIVILEGED COMMUNICATIONS OF LIBELOUS MATTER.

It is well established that statements made with the *bona fide* intent on the part of the person making them, to protect his own interest in a matter where it is concerned, are privileged communications. The question is, how far does this privilege extend? Can a person, even to protect his own interest, make libelous statements to anyone, regardless of the fact that such persons may have no connection with the matter?

This question is answered in the case of *Sheftall v. Central of Georgia Ry. Co.*, 51 S. E. 646 (Ga.). Sheftall, a passenger conductor, had been discharged from the service of the defendant. At the time of his discharge he held a number of unused and uncancelled tickets, which were good for passage over the defendant's line of railway. The defendant issued a bulletin, beginning as